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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/991,127	11/14/2001	Ethan George Russell	APPL0002	5209

25268 7590 02/15/2005

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EXAMINER

STRANGE, AARON N

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 02/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/991,127

Applicant(s)

RUSSELL ET AL.

Examiner

Aaron Strange

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-61 is/are pending in the application.
- 4a) Of the above claim(s) 57-61 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-61 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 02132002.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-56, drawn to a method of determining performance metrics for a distributed application/access of a web page, classified in class 709, subclass 224.
 - II. Claims 57-61, drawn to a method of automatically directing a computing device to download distributed application data from a preferred source, classified in class 709, subclass 219.

The inventions are distinct from each other for the following reasons:

2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they can be shown to be separately usable. In the instant case, Invention I has separate utility since it may be used to collect metrics for any purpose. Invention II has separate utility since it may be used to select a preferred source based on performance metrics determined using any method, and does not require the methods of Invention I to determine the metrics.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Attorney Ronald Anderson on 2/2/2005, a provisional election was made with traverse to prosecute invention I, consisting of claims 1-56. Affirmation of this election must be made by Applicant in replying to this Office action. Claims 57-61 are withdrawn from further consideration, pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention.

Claim Objections

5. Claim 21 is objected to because of the following informalities: There appears to be a typographical error "performance for a network" on line 4. The Examiner recommends that the claim be amended to recite "performance metric for a network".

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 4-6, 12, 16-18, 24-27, and 45-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 4 recites the limitation "the step of collecting" in line 1. There is insufficient antecedent basis for this limitation in the claim. It is noted that claim 3 provides antecedent basis for this limitation.

9. The term "substantially" in claim 12 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear how much "apparent affect" is acceptable to meet the limitation "substantially without any apparent affect". The Examiner recommends that the claim be amended to remove the term "substantially".

10. Claim 16 recites the limitation "the data center" in line 3. There is insufficient antecedent basis for this limitation in the claim. It is noted that claim 15 provides antecedent basis for this limitation.

11. Claims 24-27 recite the limitation "the data center" in line 3 of each claim. There is insufficient antecedent basis for this limitation in the claims. It is noted that claim 23 provides antecedent basis for this limitation.

12. Claims 45-48 recite the limitation "the data center" in lines 2,3,3, and 3, respectively, of each claim respectively. There is insufficient antecedent basis for this limitation in the claims. It is noted that claim 44 provides antecedent basis for this limitation.

13. All claims not individually rejected are rejected by virtue of their dependency from the above claims.

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

15. Claims 1-3,7,10,12-15,19,21,22,29,31,32,35,38,40-43,50,52, and 53 are rejected under 35 U.S.C. 102(e) as being anticipated by Burman et al. (US 2001/0010059).

16. With regard to claim 1, Burman discloses a method for determining one or more performance metrics for a distributed application in which distributed application data are transferred from a first site (server) to a second site (client) over a network, comprising the steps of: (a) enabling a user to transmit a request for the distributed application data desired by the user (Par 47, Lines 1-5), said request being transmitted from the second site to the first site over the network; (b) in response to the request, transmitting the distributed application data from the first site to the second site over the network, if the distributed application data are not already accessible at the second site

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(Par 47, Lines 1-5); (c) including machine instructions that define a performance monitoring function with the distributed application data that were requested and transmitted over the network to the second site (Par 47, Lines 11-16); and (d) executing the machine instructions at the second site, to implement the performance monitoring function and to determine the one or more performance metrics for the distributed application without using the performance monitoring function to request any distributed application data from any other site (Par 63).

17. With regard to claim 2, Burman further discloses that the performance monitoring function at the second site is initiated after the distributed application data are accessed at the second site (Par 63).

18. With regard to claim 3, Burman further discloses the step of collecting the one or more performance metrics for the distributed application over the network (Par 80, Lines 3-11).

19. With regard to claim 7, Burman further discloses that the performance monitoring function at the second site determines at least: (d) a per-image fetch latency, corresponding to a time period for fetching a specific image referenced in the distributed application data; and (e) an image arrival time, corresponding to a time at which a specific image, loaded as a part of accessing the distribution application data, arrives at the second site (Par 66-70, esp. Par 70, Lines 4-12).

20. With regard to claim 10, Burman further discloses the distributed application data have a markup language format (web pages) (Par 47).

21. With regard to claim 12, Burman further discloses that said one or more performance metrics is determined substantially without any apparent affect on the access of the distributed application data at the second site (metrics are determined after page is retrieved) (Par 48).

22. With regard to claim 13, Burman discloses a machine-readable medium on which are stored machine instructions for inclusion with distributed application data that are transferred from one site to another, said machine instructions causing: (a) a performance monitoring function to be implemented when the distributed application data are accessed (Par 66); and (b) the performance monitoring function to determine one or more performance metrics (fetch latency) (Par 66-70) for a distributed application in which the distributed application data (images) are transferred between sites and accessed at one of the sites, without using the performance monitoring function to request any distributed application data from any other site (images requested are on same server) (Par 69, Lines 1-7). Since the system disclosed by Burman operates on computers, a machine-readable medium is present which holds the instructions for the computers to read.

23. With regard to claim 14, Burman discloses a system for determining one or more performance metrics for a distributed application in which distributed application data are transferred from a first site to a second site over a network, comprising: (a) a memory; (b) a network interface; and (c) a processing device that is coupled to the memory, and the network interface, said network interface being adapted to enable communication over the network, wherein at the second site, the processing device causes a request for the distributed application data to be transmitted over the network through the network interface to the first site (Par 47, Lines 1-5), said processing device at the first site responding by transmitting the distributed application data along with machine instructions that cause the processing device at the second site to perform a performance monitoring function when executed by said processing device as the distributed application data are accessed at the second site (Par 47, Lines 1-16), said performance monitoring function determining said at least one performance metric (fetch latency) (par 66-70) and being implemented without requiring any affirmative action by a user of the processing device and without using the performance monitoring function to request any distributed application data from any other site (images requested are on same server) (Par 69, Lines 1-7).

24. With regard to claim 15, Burman further discloses that the machine instructions cause the processing device at the second site to transmit said at least one performance metric over the network to a data center serving as a collection site for

performance metrics, said data center comprising one of the first site and a separate site that is tasked with collecting the performance metrics (Par 80, Lines 3-11).

25. With regard to claim 19, Burman further discloses that the performance monitoring function at the second site determines at least: (d) a per-image fetch latency, corresponding to a time period for fetching a specific image referenced in the distributed application data; and (e) an image arrival time, corresponding to a time at which a specific image, loaded as a part of accessing the distribution application data, arrives at the second site (Par 66-70, esp. Par 70, Lines 4-12).

26. With regard to claim 21, Burman discloses a method for determining and collecting at least one performance metric related to access of a Web page by a browser program on a client device, including at least one of a compound performance metric (fetch latency) (Par 66-70) and a correlated performance for a network, comprising the steps of: (a) enabling a user to request transfer of the Web page from a server device to the client device over a network (Par 47, Lines 1-5); (b) including machine instructions with the Web page when the Web page is transferred to the client device (Par 47, Lines 11-16); (c) when the Web page is loaded by the client device for rendering by the browser program, causing the client device to execute the machine instructions to carryout a browser monitoring function, said browser monitoring function being implemented without requiring any affirmative action by a user of the client device (Par 63); (d) determining said at least one performance metric on the client device with

the browser monitoring function without using the browser monitoring function to request any Web page from any other site (images requested are on same server) (Par 69, Lines 1-7). Since no correlated performance metric is to be determined, Burman meets all claim limitations. Step (e) is an optional step, only required when a correlated performance metric is to be determined.

27. With regard to claim 22, Burman further discloses the step of transmitting said at least one performance metric from the client device to a remote site over the network (Par 80, Lines 3-11).

28. With regard to claim 29, Burman further discloses that the performance monitoring function at the second site determines at least: (d) a per-image fetch latency, corresponding to a time period for fetching a specific image referenced in the Web page; and (e) an image arrival time, corresponding to a time at which a specific image, loaded as a part of rendering the Web page, arrives at the second site (Par 66-70, esp. Par 70, Lines 4-12).

29. With regard to claim 31, Burman further discloses that said at least one performance metric comprises a performance metric (fetch latency) (Par 70, Lines 4-12) for each image included in the web page (Par 66-70).

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30. With regard to claim 32, Burman further discloses including a monitor cookie with the web page that is transferred to the client device from the server device which indicates that the Web page is a monitored document (cookies are set by server)(Par 124); detecting the monitor cookie when the Web page is transferred to the client device (Par 128-129); and causing the browser function to determine that said at least one performance metric is to be determined for the Web page in response to the monitor cookie being detected (if cookie does not contain bandwidth info, collect it) (Par 129).

31. With regard to claim 35, Burman discloses a memory medium on which are stored machine readable instructions (script file) (Par 63, Lines 5-6), which when executed by a client computing device, cause the client computing device to carryout a browser monitoring function, said browser monitoring function being implemented without requiring any affirmative action by a user of the client computing device (script is executed automatically) (Par 63, Lines 1-4) and being used for determining at least one performance metric (fetch latency) on the client computing device with the browser monitoring function (Par 63), said at least one performance metric being related to access of a distributed application (latency and/or client bandwidth) (Par 70) by a browser program executed on the client computing device and enabling at least one of a compound performance metric (fetch latency) (Par 66-70) and a correlated performance metric be determined without using the browser monitoring function to request any distributed application from any other site (images requested are on same server) (Par 69, Lines 1-7).

32. With regard to claim 38, Burman further discloses that the machine readable instructions determine at least: (d) a per-image fetch latency, corresponding to a time period for fetching a specific image referenced in the Web page; and (e) an image arrival time, corresponding to a time at which a specific image, loaded as a part of rendering the Web page, arrives at the second site (Par 66-70, esp. Par 70, Lines 4-12).

33. With regard to claim 40, Burman further discloses that said at least one performance metric comprises a performance metric (fetch latency) (Par 70, Lines 4-12) for each image included in the web page (Par 66-70).

34. With regard to claim 41, Burman further discloses detecting whether a monitor cookie is included with the distributed application (web page) that is transferred to the client computing device, said monitor cookie indicating that the distributed application is a monitored document (cookies are set by server)(Par 124); and causing the browser monitor function to determine that said at least one performance metric is to be determined for the distributed application in response to the monitor cookie being detected (if cookie does not contain bandwidth info, collect it) (Par 129).

35. With regard to claim 42, Burman discloses a system for determining and collecting at least one performance metric related to access of a Web page by a browser program, comprising: connecting to a remote storage at a server to retrieve the

Web page (retrieve web page) (Par 47, Lines 1-5), said Web page including machine instructions (Par 47, Lines 11-16) that perform a browser monitoring function and which are executed by the processing device when the Web page is loaded by the processing device for rendering (Par 63), said browser monitoring function determining said at least one performance metric (fetch latency) and being implemented without requiring any affirmative action by a user of the processing device and without using the browser monitoring function to request any Web page from any other site (images requested are on same server) (Par 69, Lines 1-7), said at least one performance metric including at least one of compound performance metric (fetch latency) (Par 66-70) and a correlated performance metric. Burman further discloses (a) a memory; (b) a network interface; and (c) a processing device that is coupled to the memory and the network interface since Burman discloses that a client computer makes the Web page request (Par 47, Lines 1-5). A client computer making a web page request must have a memory, network interface, and processing device connected to the memory and network interface since these components are required for a computer to be operable and make requests via a network.

36. With regard to claim 43, Burman further discloses that the machine instructions further cause the processing device to transmit said at least one performance metric from the processing device to a remote site over the network through the network interface (Par 80, Lines 3-11).

37. With regard to claim 50, Burman further discloses that said at least one performance metric includes at least: (d) a per-image fetch latency, corresponding to a time period for fetching a specific image referenced in the Web page; and (e) an image arrival time, corresponding to a time at which a specific image, loaded as a part of rendering the Web page, arrives at the second site (Par 66-70, esp. Par 70, Lines 4-12).

38. With regard to claim 52, Burman further discloses that said at least one performance metric comprises a performance metric (fetch latency) (Par 70, Lines 4-12) for an object (image) included in the web page (Par 66-70).

39. With regard to claim 53, Burman further discloses detecting whether a monitor cookie is included with the Web page, said monitor cookie indicating that the Web page is a monitored document (cookies are set by server)(Par 124); and cause the processing device to determine that said at least one performance metric is to be determined for the Web page in response to the monitor cookie being detected (if cookie does not contain bandwidth info, collect it) (Par 129).

Claim Rejections - 35 USC § 103

40. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

41. Claims 4,6,11,16,18,23,24,26,33,34,36,44,45, and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burman et al. (US 2001/0010059) in view of Bryant et al. (US 6,411,998).

42. With regard to claims 4,16,24, and 45, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), it fails to disclose that the step of collecting the performance metrics includes the step of applying a probabilistic sampling parameter to determine whether performance metrics are collected from each of a plurality of sites.

Bryant discloses a similar system of monitoring fetch latency of requests to a Web server. Bryant teaches that the amount of data collected can be minimized by randomly sampling the recorded times and logging only a subset of the times (Col 6, lines 41-46). While Bryant fails to explicitly recite the use of a probabilistic sampling parameter, such a parameter is required in order to limit the data collected to a subset of the total data, as disclosed by Bryant. This would have been an advantageous addition to the system disclosed by Burman since it would have reduced the amount of data collected for servers that receive large numbers of requests, making it easier to analyze the results.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply a probabilistic sampling parameter to randomly collected the performance metrics from a subset of the sites in order to reduce the amount of data collected.

43. With regard to claims 6,18,26, and 47, Bryant further discloses that the probabilistic sampling parameter is applied on a per-request basis (individual request times are sampled) (Col 6, Lines 31-46).

44. With regard to claims 11,23,33,34,36 and 44, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), it fails to disclose determining a performance metric at the first site; and combining the performance metric determined at the second site with a performance metric determined at the first site to determine a correlated performance metric.

Bryant discloses a similar system of monitoring fetch latency of requests to a Web server. Bryant teaches determining a performance metric at the first site (SERVER_PROCESSING_TIME) and combining it with the performance metric determined at the second site (LASTRSPTIME) to determine a correlated performance metric (Internet_Delay_Time) (Col 4, Line 65 to Col 5, Line 21 and Col 8, Lines 20-25). This allows the delay associated with the actual transmission over the network to be determined, exclusive of the server processing delay.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine a performance metric collected at the first site with a performance metric collected at the second site. This would have allowed the delay associated with the actual transmission over the network to be determined by the system.

45. Claims 5,17,25, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burman et al. (US 2001/0010059) in view of Bryant et al. (US 6,411,998) in further view of Bland et al. (US 5,732,218).

46. With regard to claims 5,17,25, and 46, while the system disclosed by Burman in view of Bryant shows substantial features of the claimed invention (discussed above), it fails to disclose that the probabilistic sampling parameter is applied on a per-session/user basis.

Bland teaches a method of collecting data about client sessions wherein data about request delays is collected for an entire session prior to sending it to the server (Col 3, Lines 19-23). Applying the probabilistic sampling parameter on a per-session basis and collecting data for entire sessions allows information about the clients entire experience to be determined based on how the delays changed throughout the session.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the probabilistic sampling parameter on a per-session basis and collect data for entire sessions. This allows delay data to be analyzed to determine changes in the metrics over the duration of client sessions.

47. Claims 8,27,28,37,48,49,54 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burman et al. (US 2001/0010059) in view of Bland et al. (US 5,732,218).

48. With regard to claim 8,27, and 48, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), it fails to disclose that a plurality of different performance metrics can be determined by the browser monitoring function, and determining whether to collect a performance metric as a based on a specific kind of performance metric that was determined.

Bland discloses a method of collecting data about client requests to a Web Server, wherein clients can collect a plurality of different performance metrics (Col 4, Lines 9-59). Bland teaches that the clients only collect data that is pertinent to a server in response to a request from that server (Col 4, Line 64 to Col 5, Line 16). This would have been an advantageous addition to the system disclosed by Burman since it would have reduced the amount of data that the clients must collect and transmit to the servers, reducing the load on the clients and servers.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to collect specific performance metrics as needed by the server. This reduces the amount of data that must be collected and transmitted, reducing the load on the clients and servers.

49. With regard to claims 28, 37, and 49, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), it fails to specifically disclose that the step of determining said at least one performance metric is

done without the client device providing any indication to the user of the client device that said at least one performance metric is being determined.

Bland discloses a similar system of collecting data about client transactions with a Web server. Bland teaches that the parameters may be collected by the client automatically for all data or in response to a request from a server (Col 4, Lines 60-67). Bland also teaches that notifying and requesting permission before collecting data is optional (Col 5, Lines 11-14). This would have been an advantageous addition to the system disclosed by Burman since collecting the data without notifying the user allows the system to quickly collect the data and customize the content displayed to the user based on the results.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine the performance metric without notifying the user since it would have allowed the parameter to be quickly determined in order to customize the content provided to the user based on the calculated metric.

50. With regard to claims 54, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), it fails to disclose (a) a server computing device that is remote from the processing device and coupled in communication with the processing device and with the data center over a network through the network interface, said server computing device executing a server monitoring function in regard to transferring the Web page to the processing device over the network; (b) said server computing device determining a server performance metric

related to the transfer of the Web page to the processing device from the server computing device; and (c) said server computing device transmitting said server performance metric to the data center site for processing.

Bland teaches collecting performance metrics for the server related to the transfer of Web pages (Col 3, Line 40 to Col 4, Line 59) and transmitting the metrics to a remote data center site for processing (central server that has management system) (Col 3, Lines 17-22). This would have been an advantageous addition to the system disclosed by Burman since it allows the data to be centrally collected for analysis.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to collect performance metrics at the server and send them to a remote data center for processing since it would have allowed data for multiple servers to be centrally collected and analyzed.

51. With regard to claim 56, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), including a caching proxy (proxy server 30) (Par 119, Lines 6-11) disposed between the server computing device and the processing device (Fig 1, 30), it fails to disclose said caching proxy executing a caching proxy monitoring function that determined at least one performance metric related to a performance of the caching proxy.

Bland teaches a method of collecting performance metrics for a server related to Transfer of Web page requests to a client. Bland discloses that several types of metrics are collected at the server (Col 3, Line 41 to Col 4, Line 59). For example, the delay

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between a client request and a server response is measured to determine the load on the server (Col 3, Lines 47-51). This would have been an advantageous addition to the system disclosed by Burman since the proxy server can have a significant effect on the overall latency of client requests, and determining information about its performance is crucial to finding bottlenecks in the network.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to executing a monitoring function on the proxy server to determine at least one performance metric related to the performance of the caching proxy, since the proxy server has a significant effect on latency of client requests.

52. Claims 9,20,30,39 and 51 rejected under 35 U.S.C. 103(a) as being unpatentable over Burman et al. (US 2001/0010059) in view of Jia Wang.

53. With regard to claims 9,20,30,39, and 51, while the system disclosed by Burman shows substantial features of the claimed invention (discussed above), it fails to disclose determining whether the distributed application data (web page) has already been cached at the second site (client), before determining a performance metric.

Wang discloses that browser caches and proxy caches are well-known in the art for maintaining local copies of web documents (Section 4.1.1). Browser caches and proxy caches provide reduced latency for accessing web documents (Section 3). The closer the document is to the requesting client, the faster it will be able to retrieve it. It would be advantageous to determine if the distributed application data being requested

by the client has been cached prior to determining a performance metric. If the data has been cached, the latency will be significantly lower than it would have been for uncached data, making the collected data less reliable.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine if the requested data has been cached prior to determining a performance metric since cached data will be retrieved much more quickly and the results will not be an accurate indicator of actual network latency.

54. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Burman et al. (US 2001/0010059) in view of Bland et al. (US 5,732,218) in further view of Bryant et al. (US6,411,998).

55. With regard to claim 55, while the system disclosed by Burman in view of Bland shows substantial features of the claimed invention (discussed above), it fails to disclose that the data center combines a performance metric determined by the browser monitoring function executed by the processing device with the server performance metric determined by the server computing function to determine the correlated performance metric.

Bryant discloses a similar system of monitoring fetch latency of requests to a Web server. Bryant teaches determining a performance metric at the first site (SERVER_PROCESSING_TIME) and combining it with the performance metric determined at the second site (LASTRSPTIME) to determine a correlated performance

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metric (Internet_Delay_Time) (Col 4, Line 65 to Col 5, Line 21 and Col 8, Lines 20-25).

This allows the delay associated with the actual transmission over the network to be determined, exclusive of the server processing delay.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine a performance metric collected at the first site with a performance metric collected at the second site. This would have allowed the delay associated with the actual transmission over the network to be determined by the system.

Conclusion

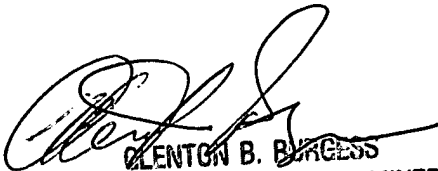
56. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

57. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ANS 2/3/2005



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